

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

HECTOR MANUEL TORRES,

Petitioner,

v.

DIRECTOR, TDCJ-CID

Respondent.

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Case No. 6:19-CV-168-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Hector Manuel Torres, an inmate proceeding *pro se*, filed the above-styled and numbered petition for writ of habeas corpus. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On June 25, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 4), recommending that Petitioner’s petition be dismissed as successive. *Id.* at 4. Petitioner filed objections on August 1, 2019. Docket No. 7.

The Court overrules Petitioner’s objections. Petitioner’s objections discuss only “whether the decision in *Chaidez v. United States* . . . override[s] his Sixth Amendment claim of ineffective assistance of counsel.” Docket No. 7 at 1. He does not, however, dispute the Magistrate Judge’s proper conclusion that his petition is successive. Petitioner sought leave from the Fifth Circuit to file a successive petition on December 30, 2019—after the Magistrate Judge’s Report issued—but the Fifth Circuit denied the motion for leave on January 27, 2020. *In re Torres*, No. 19-41062 (5th Cir. Jan. 27, 2020). Because Petitioner has not received permission from the Fifth Circuit to file a successive petition, the Court lacks jurisdiction. *See Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003).


Having made a *de novo* review of the objections raised by Petitioner to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 4) be **ADOPTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** as to its refiling without obtaining permission from the Fifth Circuit, but without prejudice as to its refiling once such permission has been obtained. It is further

ORDERED that the Petitioner is **DENIED** a certificate of appealability *sua sponte*. The denial of the certificate of appealability refers only to an appeal of this case and shall have no effect upon the Petitioner's right to seek leave to file a successive petition or to pursue such a petition in the event that permission is granted.

So **ORDERED** and **SIGNED** this **18th** day of **March, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE